



**U.S. Department of Justice**  
*Office of the United States Trustee*  
**REGION 20**  
*Northern and Eastern Districts of Oklahoma*

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IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN AND NORTHERN DISTRICTS OF OKLAHOMA

DEBTOR-IN-POSSESSION )  
 ) CHAPTER 11  
 )  
 )

UNITED STATES TRUSTEE  
OPERATING GUIDELINES  
EFFECTIVE OCTOBER 1, 1997

The filing of a Petition for relief under Chapter 11 of the Bankruptcy Code (Title 11 U.S.C.) creates a new entity referred to as a bankruptcy estate. The Debtor remains in possession of the property of the bankruptcy estate thus becoming a fiduciary of the bankruptcy estate referred to as the Debtor-in-possession (DIP). The DIP must comply with the Bankruptcy Code and Federal Rules of Bankruptcy Procedure while operating as a DIP. Under the Bankruptcy Code, the DIP is required to comply with reasonable requirements and/or requests for information by the United States Trustee.<sup>1/</sup> Further, the DIP is required to communicate/negotiate in good faith with all parties in interest during the pendency of the bankruptcy and to make the estate's books and records available for reasonable review by all parties.<sup>2/</sup>

1. **Initial Meeting.** The Debtor-in-possession shall contact the Office of the U. S. Trustee immediately upon filing the petition and schedule a time for an Initial Meeting. The DIP

<sup>1/</sup>See 11 U.S.C. §704(8) and (9) made applicable in Chapter 11 cases by 11 U.S.C. §1106(a)(1).

<sup>2/</sup>See 11 U.S.C. §704(7) made applicable in Chapter 11 cases by 11 U.S.C. §1106(9)(1).

should bring a *completed Initial Report* to the meeting and be prepared to discuss its business/financial affairs.

2. **Bank Accounts.** All of the Debtor's pre-petition bank accounts shall be closed immediately upon the filing of the Petition and new Debtor-in-possession accounts opened. Debtor-in-possession accounts may be maintained only at federally insured (FDIC) institutions that are authorized depositories recognized by the Office of the United States Trustee. The Debtor-in-possession accounts shall consist of an operating and a tax account (if applicable, a payroll account or a personal account). The Debtor-in-possession accounts shall indicate that the Debtor is in Chapter 11 as a Debtor-in-possession. The Debtor-in-possession shall file Exhibit 9 with the Initial Report identifying the financial institution used for all Debtor-in-possession accounts, the date the accounts were opened, and the current balance (Exhibit 9 shall also provide information for pre-petition bank accounts). The Debtor-in-possession shall attach to the Initial Report specimen checks and copies of the bank signature cards for all accounts. Debtors-in-possession and Chapter 11 Trustees are not permitted to vary from this procedure unless prior written permission has been obtained from the United States Trustee. Checks are to be pre-numbered by the bank and shall include the Case Name, Case Number, the words "**Debtor-in-Possession, Chapter 11**" and the type of account (General, Payroll or Tax). NOTE: In the event cash in one financial institution will at any date exceed \$100,000.00, the debtor shall notify the United States Trustee in order to arrange a pledge of collateral by the financial institution to the Federal Reserve.

3. **Books and Records.** The books and records of the Debtor shall be closed as of the date of the filing of the petition and new books and records kept thereafter for the Debtor-in-possession. The Debtor-in-possession shall preserve all pre-

petition books and records, and continue to segregate post-petition accounts and transactions. This is to be reported in the monthly operating reports.

4. **Filing and Meeting Requirements.** Voluntary cases may be dismissed if the Schedules and Statement of Affairs are not timely filed. The Meeting of Creditors will be scheduled by the United States Trustee with notice from the Clerk of the Court to all parties in interest. The individual responsible for discharging the duties of the Debtor-in-possession is required to attend and be prepared to discuss its business affairs. Failure to attend may result in the dismissal of the case. An organizational meeting will also be scheduled by the United States Trustee for creditors interested in appointment to the unsecured creditors committee.

5. **Insurance Coverage.** The Debtor-in-possession shall provide the U. S. Trustee with evidence (Certificate of Insurance) of **per occurrence, replacement** coverage for all estate property, including but not limited to all furnishings, inventory, crops and motor vehicles and, if applicable, liability and workers compensation coverage. The Certificate of Insurance shall state that the U. S. Trustee will be notified within 10 days in the event of cancellation. The Debtor-in-possession shall immediately notify the U. S. Trustee and the Creditors Committee and secured creditors, if applicable, of any lapse or proposed cancellation of any coverage.

6. **Tax reporting and Withholding Requirements.** All Debtors-in-possession are subject to the Internal Revenue Service, Oklahoma Tax Commission, and local taxing regulations regarding tax deposits and reporting requirements. The Debtor-in-possession shall file all past due, delinquent tax returns within thirty (30) days. Certificate of current tax reports and deposits shall be made in the Monthly Operating Reports along

with a bank reconciliation for the tax account. All Tax Returns shall be timely filed and accompanied by any sum due for unpaid post-petition taxes. Copies of all tax records shall be maintained for inspection. The last 2 years' tax returns shall be included with the Initial Report.

**7. Reports to the Court:**

- a. **Initial Report.** No later than fifteen (15) days after the filing of the Petition, the Debtor-in-possession shall file an Initial Report with Exhibits 1-12. If several businesses are involved in the Chapter 11 estate, a separate report shall be filed for each entity.
- b. **Pre-Confirmation Monthly Operating Report.** The Debtor-in-possession shall file by the 15th of every month, until a Plan is confirmed, a Monthly Operating Report to be certified by the Debtor-in-possession. The DIP shall mail a copy to members of the Unsecured Creditors Committee, Secured Creditors and any party requesting the report.
- c. **Post-Confirmation Quarterly Report and Final Report.** The Debtor-in-possession shall provide to the U. S. Trustee a quarterly Post Confirmation Report. Upon consummation of the Plan, the Debtor-in-possession shall file with the Court a Final Report and request a Final Decree.

**8. Duties of the Debtor-in-possession:**

- a. **Cash Collateral.** The Debtor-in-possession may not use cash collateral unless each entity that has an interest in such cash collateral consents; or the Court enters an Order authorizing its use. **Steps must be taken immediately to obtain approval by the Court.** Generally, cash collateral includes

any cash or cash equivalent subject to a security interest. The DIP and its attorney should refer to §363 of the Bankruptcy Code (11 U.S.C.).

- b. **Pre-Petition Debt.** The Debtor-in-Possession **may not pay debts incurred prior to the filing of the Petition**, including taxes, **unless authorized by the Court**. The Debtor-in-possession may not buy and sell merchandise, supplies and property except in the "ordinary course of business, necessary and essential for its operation." All purchases or sales may be for cash or for credit not to exceed thirty (30) days. Any purchases or sales not in the ordinary course of business must have Court approval.
- c. **Continuation of Business.** The Debtor-in-possession is authorized to continue in possession of the assets and effects of the business and to carry on normal business until further order of the Court. The Debtor-in-possession must identify designated individuals responsible for discharging the debtor's duties and for the preparation of financial reports (See Initial Report Exhibits 6 and 7).
- d. **Professionals.** The Debtor-in-possession shall obtain the Court's approval to retain attorneys, accountants, appraisers, auctioneers or other professional persons employed to assist the estate **prior to the commencement of employment**. Pre-authorized services may be denied compensation.
- e. **Credit or Debt.** The Debtor-in-possession shall obtain the Court's approval to obtain credit or

incur debt, other than in the ordinary course of business.

- f. **Cooperation.** The Debtor-In-Possession shall cooperate fully with the United States Trustee and and the Creditor's Committee towards the investigation of the Debtor-in-possession's acts and conduct, as well as the preparation and formulation of the Plan and Disclosure Statement.
- g. **No Delay.** The Debtor-in-possession shall avoid unnecessary delay in the administration of this case. The Debtor-in-possession is charged with the duty to report to the Court and creditors the soundness and desirability of continuation of the business and to take all necessary steps to prevent depletion or loss of assets during the pendency of these proceedings.
- h. **Receipt and Certification.** The Debtor-in-possession shall acknowledge receipt and understanding of the U. S. Trustee Operating Guidelines. (See Initial Report Exhibit 8)
- i. **Recovery of Transfers.** The Debtor-in-possession must avoid all unauthorized post-petition transfers, including payment to professionals without court permission, or other pre-petition debts and obligations.

9. **Circulation of Order, Notices and Reports.** With the exception of the Order for Meeting of Creditors, the Debtor-in-possession estate is responsible for circulation of all Orders to the United States Trustee and parties in interest. Notices of proposed actions by the Debtor-in-possession shall comply with B.R. 2002 and other applicable rules. The debtor-in-possession

shall serve copies of all reports and schedules to the United States Trustee and the Creditors' Committee or its attorney.

10. **Progress towards confirmation of a Plan.** The United States Trustee monitors all cases on a regular bases, and if it is apparent that no progress is being made toward the filing and confirmation of a Plan, the United States Trustee may request the Court to direct the Debtor-in-possession to appear and show cause why the case should not be dismissed or converted for prejudicial delay.

11. **Disclosure Statement and Plan.** Plain language without boiler-plate assertions will assist all creditors in understanding the Debtor-in-possession's proposals. The Disclosure Statement and Plan should be filed within 120 days of the case filing with a proposed notice of hearing. The hearing notice is to be sent to all parties but the proposed plan and disclosure statement is sent only to limited parties, as directed by B.R. 3017. After approval, the court will set the Plan for confirmation and the Debtor-in-possession shall mail to all creditors and parties in interest: Order for Hearing, Approved Disclosure Statement, Proposed Plan and a Ballot to be returned to the Debtor-in-possession. The Plan must state the following language:

"The [reorganized debtor or other responsible party] shall be responsible for the timely payment of disbursement fees incurred pursuant to 28 U.S.C. § 1930(a)(6). After confirmation, and until the case is closed by the Court, the [reorganized debtor or other responsible party] shall file with the Court and serve on the United States Trustee a financial report for each month (or portion thereof) the case remains open in a format prescribed by the United States Trustee."

12. **The United States Trustee Quarterly Fees.** The Quarterly fees shall be collected in accordance with 28 U.S.C. §1930(a)(6), until the case is closed. The amount of the fee varies depending upon the amount of money disbursed from the case during the calendar quarter; **however, a minimum fee of \$250 is due each quarter even if no disbursements are made.** The fee schedule is as follows:

<u>Disbursements</u>	<u>Fee</u>
Less than \$15,000	\$ 250
\$15,000 - \$74,999.99	500
\$75,000 - \$149,999.99	750
\$150,000 - \$224,999.99	1,250
\$225,000 - \$299,999.99	1,500
\$300,000 - \$999,999.99	3,750
\$1,000,000 - \$1,999,999.99	5,000
\$2,000,000 - \$2,999,999.99	7,500
\$3,000,000 - \$4,999,999.99	8,000
\$5,000,000 or more	10,000

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